RHB Capital Bhd v Tan Sri Dato' Abdul Rashid bin Haji Mohamed Hussain

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D2–22–181 0F 2004
ZAINUN ALI J
16 DECEMBER 2005

Companies and Corporations — Directors — Compensation for loss of office — Gratuity payment to director upon resignation — Whether gratuity payment was paid by plaintiff company without approval of shareholders — Evidence of accounting records tendered — Whether gratuity payment was part of remuneration package of defendant and not amounted to compensation for loss of office — Companies Act 1965 s 137

Companies and Corporations — Directors — Resignation — Gratuity payment to director upon resignation — Whether compensation was paid by plaintiff company without approval of shareholders — Evidence of accounting records tendered — Whether gratuity payment was part of remuneration package of defendant and not amounted to compensation for loss of office — Companies Act 1965 s 137

The plaintiff and the defendant executed a service contract dated 5 August 1999 ('the RHC contract') which governed the defendant's employment as the Executive Chairman and/or Chief Executive Office and/or Chairman and/or Director of the plaintiff and its subsidiaries. The defendant, at the same time also executed a service contract dated 5 August 1999 with RHB Securities Sdn Bhd ('RHS') which governed the defendant's employment as the Executive Chairman of RHS.

The defendant submitted his resignation as the Executive Chairman of the plaintiff by a letter dated 24 January 2003 to the plaintiff, the same to take effect from 1 February 2003. By a further letter also dated 24 January 2003, to RHS, the defendant submitted his resignation as the Executive Chairman of RHS, and same to take effect from the date of its acceptance by the Kuala Lumpur Stock Exchange.

The Board of Directors of the plaintiff on 28 January 2003 were informed by director DW1, that inter alia, a sum of RM20m representing a gratuity payment for a period of service of 20 years would be paid by RHS to the defendant pursuant to the RHS contract upon the retirement of the defendant on 1 February 2003.

The RM20m cheque was paid directly into the defendant's bank account on 7 February 2003.

The plaintiff's claim was that the RM20m being the purported gratuity, despite the internal accounting entries, was in fact paid out of the plaintiff's funds — and not made by RHS — to the defendant, thereby contravening s 137 of the Companies Act 1965, because: (1) the particulars of the RM20m payment were never disclosed to the members of the plaintiff; and (2) the RM20m payment was never approved by the members of the plaintiff in a general meeting — thus it was not sufficient for only

the plaintiff's Board of Directors to approve the RHS contract without including the approval of plaintiff's shareholders as well, ie RHB and members of the public. Thus it was submitted that the RM20m payment was unlawful and the defendant held it on trust for the plaintiff.

Held, dismissing the plaintiff's claim with costs:

(1) The documentary evidence as found in the accounting records and entries, by their explicit language provided stark indication of the actual status of the RM20m. Whilst it was the plaintiff which released its own cheque directly to the defendant, it was no doubt that it was RHS which actually bore the payment of the RM20m. The RM20m as reflected in all the entries from both companies (plaintiff and RHS) showed that the amount was taken up, charged to, borne or suffered by RHS (see para 49).

(2) A plain reading of s 137(1)(a) of the Companies Act 1965 would show that the intention of Parliament is to provide 'greater disclosure to the shareholders'. It is certainly not the legislative intention to provide disclosure to the shareholder's shareholders, for to do so would mean that the plaintiff is going beyond the legislative intent, rendering a bizarre and tortuous construction to what Parliament had contemplated (see para 125 & 126). Therefore, if one were to adopt the plaintiff's construction of s 137 requiring disclosure to and approval of the shareholder's shareholders as well, it would be overstretching the language (see para 128).

(3) With regard to the plaintiff's contention that the precise amount of the payment must be disclosed, this court finds the contention otiose, as such requisite is absent in s 137(5)(b) since what is merely required therein is only that the particulars of the agreement is given. In this case, the RHS contract under which the RM20m was provided for and which was paid by RHS to the defendant had the prior unanimous approvals of RHS's Board of Directors, the plaintiff s Board of Directors and RHS's shareholders in general. These facts were confirmed and supported by the evidence from both the plaintiff and defendant (see para 132).

(4) Since the RM20m was not paid by the plaintiff, it would mean that the company mentioned in s 137(1) Companies Act 1965 was RHS and certainly not the plaintiff. Regard must be had to the relevant clauses in the RHS contract, particularly cl 15(c) which describes the payment as being '…. In recognition of the past services rendered by (the defendant) to the company' (see para 135). From the facts disclosed, the event which triggered off the payment was the defendant's departure from the company upon completion of the sale of his shares in RHB (see para 136). This fact was crucial, since the RM20m was clearly part of the remuneration package of the defendant and was not intended to be paid with the object of compensating the defendant for loss of his office or as consideration for or as consideration in connection with his retirement (see para 137).

(5) Not every payment made to a director upon cessation of his employment is caught by s 137. Only payments aimed at compensating the director for loss

of office are covered. Payments which are made due to other considerations, even if they may be coincidental with the loss of office, will not be prohibited (see para 152); *Fasi v Specialty Laboratories Asia Pte Ltd (No 2)* (1999) 4 SLR 503 followed.

(6) In the light of the rationale inherent in s 137, 'compensation' generally refers to payment to 'recompense' the director or officer concerned, following the loss of office. But if the payment has no connection with the loss of office and where it is shown that the true character and nature of the payment arises from other considerations, then the compensation payable is not within the prohibition of the section (see para 169). In this case, the RM20m payment to the defendant was a legitimate payment under the terms of his service contract as part of his remuneration package. It was not paid with the object of compensating the defendant for loss of his office or as consideration for or in connection with his retirement (see para 170).This fact was borne out in cl 15(c) of the RHC contract which describes the payment as being 'in recognition of the past services rendered by the defendant to the company' (see para 171).

(7) Even if the postulation is that the payment coincided with the defendant's retirement it did not alter the nature of the payment, as to make it fall within s 137(1). In other words, it was a payment which RHS had agreed and was liable to make to the defendant in the events that had happened upon his ceasing to hold his office under the terms of the RHS contract. This construction will not only attain the just ends of the s 137, it would also secure its manifest purpose (see para 172).

(8) As the payment of RM20m to the defendant was in fact and in law, a payment by RHS and not the plaintiff, and since it attracts the exception in cl (5)(b) of s 137, the issue of approval as contemplated by the plaintiff under s 137(1)(a) fell by the wayside and was therefore irrelevant (see para 173).

[Bahasa Malaysia summary

Plaintif dan defendan telah melaksanakan satu servis kontrak bertarikh 5 Ogos 1999 ('kontrak RHC') yang mengawal kontrak defendan sebagai Pengerusi Eksekutif dan/atau Ketua Eksekutif Ofis dan/atau Pengerusi dan/atau Pengarah kepada plaintif atau subsidiarinya. Defendan, pada masa yang sama juga telah melaksanakan satu servis kontrak bertarikh 5 Ogos 1999 dengan RHB Sekuriti Sdn Bhd ('RHS') yang mengawal pekerjaan defendan sebagai Pengerusi Eksekutif RHS.

Defendan telah menyerahkan surat perletakan jawatannya sebagai Pengerusi Eksekutif plaintif melalui surat bertarikh 24 Januari 2003 kepada plaintif, yang mana, yang sama dikuatkuasakan dari 1 Februari 2003. Melalui satu surat bertarikh 24 Januari 2003 kepada RHS, defendan telah menyerahkan surat perletakan jawatannya sebagai Pengerusi Eksekutif RHS dan yang sama telah dikuatkuasakan dari tarikh penerimaannya oleh Bursa Saham Kuala Lumpur.

Lembaga Pengarah plaintif pada 28 Januari 2003 telah dimaklumkan oleh pengarah DW1 bahawa, inter alia, sejumlah RM20m mewakili bayaran ganjaran bagi tempoh masa 20 tahun servis akan dibayar oleh RHS kepada defendan berikutan kontrak

A RHS ke atas persaraan defendan pada 1 Februari 2003. Cek berjumlah RM20juta telah dibayar secara terus ke dalam akaun bank defendan pada 7 Februari 2003.

Cek berjumlah RM20juta telah dibayar secara terus ke dalam akaun bank defendan pada 7 Februari 2003.

B Tuntutan plaintif adalah RM20 juta yang merupakan ganjaran bertujuan,, sungguhpun kemasukan perakaunan dalaman telah dibayar keluar dari tabung plaintif — dan tidak dibuat oleh RHS — kepada defendan. Ini melanggar s 137 Akta Syarikat 1965 kerana (1) butir-butir bayaran RM20juta tidak pernah didedahkan kepada ahli -ahli plaintif dan (2) bayaran RM20juta tidak pernah dipersetujui oleh ahli-ahli plaintif dalam satu mesyuarat yang umum — malah ia tidak hanya C mencukupi bagi Lembaga Pengarah plaintif untuk membenarkan kontrak RHS tanpa memasukkan juga persetujuan pemegang saham plaintif ie RHB dan ahli-ahli awam. Malah, dikatakan bayaran RM20juta adalah menyalahi undang-undang dan defendan memegangnya atas kepercayaan bagi plaintif.

D

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Keterangan dokumentari seperti yang terdapat didalam rekod perakaunan melalui bahasa esplisit telah memperuntukkan status sebenar RM20juta. Sementara merupakan plaintif yang memberikan ceknya sendiri kepada E defendan, adalah tiada kesangsian bahawa RHS sebenarnya menanggungi bayaran RM20 juta. RM20 juta seperti yang digambarkan di dalam kesemua kemasukan daripada kedua-dua syarikat (plaintif dan RHS) menggambarkan jumlah telah diambil kira, dicajkan dan dialami atau ditanggungi oleh RHS (lihat perenggan 49).

F (2) Pembacaan yang mudah s 137(1)(a) Akta Syarikat 1965 akan menunjukkan bahawa keiniginan Parlimen adalah untuk memperuntukkan lebih pendedahan kepada pemegang-pemegang saham ('greater disclosure to the shareholders'). Memang tidak merupakan keinginan perundangan untuk membuat pendedahan kepada pemegang-pemegang saham kerana untuk G berbuat demikian bermakna plaintif melangkah satu keinginan perundangan, memberikan satu pembinaan yang aneh dan 'tortuous' kepada apa yang ditakafurkan (lihat perenggan 125 & 126). Oleh itu, jikalau seseorang itu dikatakan menyerap pembinaan s 137 meminta pendedahan kepada dan persetujuan pemegang-pemegang saham, bahasanya mungkin tidak dapat difahami kerana telah dipanjangkan (lihat perenggan 128).

H (3) Berkenaan perdebatan plaintiff bahawa jumlah tepat bayaran mesti didedahkan, mahkamah mendapati perdebatan tersebut adalah lewah, seperti mana, keperluan tersebut tidak ada dalam s 137(5)(b) sementara apa yang hanya diperlukan didalam ini adalah cuma bahawa butir-butir perjanjian I diberikan. Didalam kes ini, dimana RM20juta diperuntukkan di bawah kontrak RHS dan telah dibayar oleh RHS kepada defendan telah menerima persetujuan awal sebulat suara Lembaga Pengarah RHS, Lembaga Pengarah plaintif dan pemegang saham RHS keseluruhannya. Fakta-fakta ini telah diesahkan dan disokong oleh keterangan daripada kedua-dua plaintif dan defendan (lihat perenggan 132).

(4) Sejak RM20juta tidak dibayar oleh plaintif, ia bermakna bahawa syarikat yang disebut dalam s 137(1) Akta Syarikat 1965 adalah RHS dan sudah tentunya bukan plantif. Perhatian mesti diberikan kepada klausa-klausa relevan dalam RHS kontrak, terutamanya kl 15(c) yang menggambarkan bayaran sebagai …. 'In recognition of the past services rendered by (the defendant) to the company' (lihat perenggan 135). Daripada fakta-fakta yang diberikan, perkara yang mencetuskan bayaran adalah pemergian defendan daripada syarikat berdasarkan penyelesaian penjualan syer-syer dalam RHB (lihat perenggan 136). Fakta ini adalah mustahak sementara RM20juta adalah jelas sebahagian daripada ganjaran bungkusan defendan dan tidak ada keinginan untuk membayar dengan tujuan menberi pampasan kepada defendan untuk kehilangan ofis atau sebagai balasan bagi atau sebagai balasan berkaitan dengan penyaraan (lihat perenggan 137).

(5) Bukan semua bayaran yang dibuat kepada pengarah ke atas perhentian pekerjaannya disangkut oleh s 137. Hanya bayaran yang ditujukan untuk memberi pampasan kepada pengarah bagi kehilangan ofis adalah diliputi. Bayaran yang dibuat disebabkan kepada lain-lain balasan, jikapun mereka adalah kebetulan dengan kehilangan ofis, ia tidak akan dilarang (lihat perenggan 152); *Fasi v Specialty Laboratories Asia Pte Ltd (No 2)* (1999) 4 SLR 503 diikut.

(6) Di dalam pandangan rasional sedia ada dalam s 137, pampasan merujuk kepada bayaran untuk memberi pampasan kepada pengarah atau pegawai berkenaan berikutan kehilangan ofis. Tetapi jika bayaran tersebut tidak mempunyai sebarang kaitan dengan kehilangan ofis dan dimana ditunjukkan ganbaran sebenar dan sifat pembayaran timbul dari balasan-balasan lain maka pampasan yang dibayar bukan dalam seksyen yang dilarangkan (lihat perenggan 169). Di dalam kes ini, RM20juta bayaran kepada defendan merupakan satu bayaran yang sah di bawah terma-terma servis kontrak sebagai sebahagian daripada ganjaran bungkusan. Ia tidak dibayar dengan tujuan untuk memberi pampasan kepada defendan bagi kehilangan ofis atau sebagai balasan bagi atau berkaitan dengan penyaraannya (lihat perenggan). Fakta ini dikeluarkan dari kl 15(c) Kaedah-kaedah Mahkamah Tinggi kontrak yang menggambarkan bayaran sebagai pengecaman/pengenalan servis-servis dahulu yang diberikan oleh defendan kepada syarikat (lihat perenggan 171).

(7) Sungguhpun 'postulation' itu adalah bayarannya bersesuaian dengan penyaraan defendan, ia tidak menukarkan sifat atau bentuk pembayaran supaya jatuh dalam lingkungan s 137(1). Dalam perkataan lain, ia merupakan bayaran, di mana, RHS telah bersetuju dan adalah bertanggungjawab untuk membuat kepada defendan didalam keadaan-keadaan yang berlaku ke atas perhentiannya untuk memegang ofis di bawah terma-terma RHS kontrak. Pembentukan ini tidak hanya akan mencapai tujuan muktamad s 137 tetapi ia juga akan menjamin tujuan kebenarannya yang nyata (lihat perenggan 172).

(8) Seperti mana bayaran RM20 juta kepada defendan adalah merupakan satu fakta dan satu di bawah undang-undang, bayaran oleh RHS dan bukan plaintif dan semenjak ia menarik pengecualian di dalam kl (5)(b) s 137, isu persetujuan seperti yang ditakafurkan oleh plaintif di bawah s 137(1)(a) telah jatuh dan oleh itu adalah tidak relevan (lihat perenggan 173).]

Notes

For cases on compensation for loss of office, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 172–174.

For cases on resignation of directors, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 303–304.

Cases referred to

ABC Supermarket Pte Ltd v Kosma Handlings Pte Ltd (The Management Corporation Strata Title, 3rd party (2004] SGDC 193 (refd)

Britannia Brands (Singapore) Pte Ltd v Sushil Premchand [1995] 1 SLR 128 (refd)

Fasi v Specialty Laboratories Asia Pte Ltd (No 2) (1999) 4 SLR 503 (folld)

Grinsted v Brittannia Brands (Holdings) Pte Ltd [1996] 2 SLR 97 (refd)

Ho v Comptroller of Income Tax [1994] SGITBR 2 (refd)

Kamalam v Eastern Plantation Agencies [1996] 4 MLJ 174 (refd)

Lincoln Mills (Aust) Ltd v Gough [1964] VR 193 (refd)

Rex v Bishop of Oxford [1879] 4 QBD 245 (refd)

Sim Siok Eng & Anor v Poh Hua Transport & Contractor Sdn Bhd [1980] 2 MLJ 72 (refd)

Tan Kim Chuan v Chandra Nair [1991] 1 MLJ 42 (refd)

The Taupo Totara Timber Co Ltd v Rome [1978] AC 537 (refd)

Legislation referred to

Companies Act 1965 ss 137(1)(a), (5)(b), 174(B), 169(4), 147(6), (3)
Companies Act 1961 [Aust] s 129(1)(a)
Companies Act 1955 [NZ] s 191
Rules of High Court 1980 O 59 r 19

Ira Biswas (Vong Poh Fah and Lim Tuck Sun with her) (Chooi & Co) for the plaintiff.

Darryl Goon (Ong Chee Kwan and YM Raja Aileen Soraya with him) (Lee Ong & Kandiah) for the defendant.

Zainun Ali J:

[1] The full ambit of s 137 of the Companies Act 1965 falls to be considered by this court in the instant case. A judicial determination of the section provides insight into how it operates and the purport of its existence, not least when there is no decided authority on this particular provision of the Companies Act 1965 in Malaysia.

BACKGROUND

[2] The factual position of this matter which is, in any case, undisputed is that:

(a) The plaintiff and the defendant executed a service contract dated 5 August 1999 (ie the RHC contract). The terms of this contract governs the defendant's employment as the Executive Chairman and/or Chief Executive Office and/or Chairman and/or Director of the plaintiff and its subsidiaries which are described therein.

(b) The RHC contract does not provide for compensation for loss of office. However cl 10(c) thereof provides that RHC contract may be terminated at any time by the defendant upon the giving of at least six months written notice.

(c) The defendant, at the same time also executed a service contract dated 5 August 1999 with RHB Securities Sdn Bhd (RHS) which governs the defendants employment as the Executive Chairman of RHS.

[3] It is instructive to look at the relevant clauses of the RHS contract. It provides, inter alia as follows:

(a) Clause 15 (c) provides that the RHS contract may be terminated at any time by the defendant upon giving of at least six months notice to RHS. In such event, RHS shall make payment to the defendant of an aggregate amount of the sum of RM1,000,000 for each year of service to be calculated commencing from 1983, up to and including the year in which such termination occurs and such other additional payments as may be determined by the board of director of RHS and agreed to by the defendant.

(b) Clause 15(d) provides that in the event that the defendant ceases to hold the position of Executive Chairman and Chief Executive Officer of the Group (which is defined in the RHS Contract to mean the plaintiff, its subsidiaries and the companies in which the plaintiff has an interest in the equity share capital thereof, and includes such companies as may at the time of the RHS Contract or at anytime thereafter subsists, RHS shall pay compensation to the defendant in the amount equal to the payment payable to the defendant pursuant to cl 15(c) of the RHS contract;

(c) Clause 15(f) provides that any payment under the RHS contract shall be made within 30 days of the applicable termination of employment of the defendant.

[4] The defendant submitted his resignation as the Executive Chairman of the plaintiff by a letter dated 24 January 2003 to the plaintiff, the same to take effect from 1 February 2003. By a further letter also dated 24 January 2003 to RHS, the defendant submitted his resignation as the Executive Chairman of RHS and same to take effect from the date of its acceptance by the Kuala Lumpur Stock Exchange.

[5] The Kuala Lumpur Stock Exchange by a letter dated 14 February 2003 accepted the resignation of the defendant as a dealing member of the Exchange and as Executive Chairman of RHS with effect from 23 February 2003.

[6] The Board of Directors of the plaintiff on 28 January 2003 were informed by one Chong Kin Leong (DW1), who was at the material time, a director of the plaintiff, that inter alia, a sum of RM20,000,000 representing a gratuity payment for a period of service of 20 years would be paid by RHS to the defendant pursuant to the RHS contract upon the retirement of the defendant on 1 February 2003.

[7] A cheque dated 29 January 2003 for the said sum of RM20m was issued by the plaintiff, made out to the defendant. The cheque was signed by the said Chong Kin Leong and one Rosley bin Ahmad.

[8] The said RM20m cheque was paid directly into the defendant's bank account on 7 February 2003.

(see exh p–30: deposit slip) (see also plaintiff's general ledger account No 209130:— cash in bank — RHB Bank Bhd — exh P–65, CAB(3) p 32).

The plaintiff's ledger states:

Gratuity paid on RHB Security behalf 279811 TS Abd Rashid H

Thus it is not in dispute that::

(a) Under the RHS contract, the defendant is entitled to a payment upon his retirement from RHS; and

(b) The defendant did receive a sum of RM20m upon his retirement from RHS

The plaintiff's pleaded case

[9] That based on the above uncontroverted facts, the essence of the plaintiff's claim is the said RM20m being the purported gratuity referred to in para twelve of the statement of claim was in fact thereafter paid out of the plaintiff's funds to the defendant by way of an RHB cheque no 279811 dated 29 January 2003 which cheque was signed by the said Chong Kin Leong and one Rosley bin Ahmad to which the defendant admits (see para 11 of the defence).

[10] The plaintiff claims that the RM20m payment contravened s 137 of the Companies Act 1965 as:

(a) The particulars of the RM20m payment were never disclosed to the members of the plaintiff;

(b) Further or in the alternative, the RM20m payment was never approved by the members of the plaintiff in a general meeting (para 14 statement of claim).

(c) Thus the RM20m payment was unlawful and the defendant holds it on trust for the plaintiff, (para 15 statement of claim).

(d) The failure by the defendant to return the RM20m payment of the plaintiff is an act in breach of trust. Further or alternatively, the defendant wrongfully had and received the RM20m payment to the use of the plaintiff, (paras 17, 18 & 19 of the statement of claim).

[11] It is the plaintiff's case that the Board of Directors of the plaintiff did not approve nor agree that the RM20m payment to the defendant be made from the plaintiff's funds and in fact the Board of Director of plaintiff was not informed that the RM20m payment would be made from the plaintiff's funds.

[12] It is the plaintiff's case that as at the date of both the RHC and RHS contracts (ie 5 August 1999) the shareholders/members of the plaintiff were RHB and members of the public. At the date of plaintiff's RHB cheque No 279811 for RM20m dated 29 January 2003 and at the date of the clearance of the said RM20m cheque on 7 February 2003, the shareholders/members of the plaintiff were RHB and members of the public.

[13] Plaintiff contends that the shareholding of RHS at all material times was as follows:

(a) On 5 August 1999 (date of the RHC and RHS contracts), the sole 100% shareholder/member of RHS was the plaintiff;

(b) Between 9 December 2002 and 8 February 2003, the RHS shareholding was: RHB Sakura Merchant Bankers Bhd held the beneficial interest in the entire issued and paid up share capital of RHS. From 6 January 2003 to date, RHB Sakura Merchant Bankers Bhd held both the legal and beneficial interest in the entire issued and paid up share capital of RHS.

(c) That from 21 November 2002 to date, the entire issued and paid up share capital of RHB Sakura Merchant Bankers Bhd was held by the plaintiff. Prior to that it was a public listed subsidiary of the plaintiff. As for RHB's shareholding, it is as follows:

(i) On 5 August 1999 (date of the RHC and RHS contracts) the major shareholder of RHB were the defendant (23.95%), Malaysian Resources Corporation Bhd (22.69%), Kumpulan Wang Amanah Pencen (16.78%) and (9.3%)

[14] Thus the plaintiff's stance is that the:

(a) shareholders/members of the plaintiff did not approve the RHS contract, neither was there relevant approvals from shareholders/members for the RHS contract; and

(b) shareholders/members of RHB also did not approve the RHS contract

[15] The plaintiff contends that not only was there no request for advance from RHS for plaintiff to pay the RM20m to the defendant, the plaintiff's Board of Directors did not approve that the RM20m payment be made from the plaintiff's funds. That the matter is compounded when the said sum of RM20m paid to the defendant from the plaintiff's funds and bank account was not disclosed to the shareholders/members of the plaintiff.

[16] That the plaintiff's Board of Directors were not informed of nor did they approve or agree that the RM20m payment be made from plaintiff's funds and bank account.

In short, the plaintiff says that:

(a) there was no approval obtained from the shareholders/members of the plaintiff for the RM20m payment to be made from plaintiff's funds;

(b) no approval was obtained from the shareholders/members of the plaintiff for the RM20m payment to be made by RHS;

(c) no approval was obtained from the shareholders/members of RHB for the RM20m payment to be made by the plaintiff or by RHS;

(d) no approval was obtained from the shareholders/members of the RHB Sakura for the RM20m payment to be made by RHS.

The defendant's case — The defence

[17] The first of the defence is that the defendant contends that the RM20m payment was in law and in fact a payment made to the defendant by RHS on the terms of the RHS contract and which payment was borne by RHS (para 12 defence).

[18] The defendant contends that the particulars of the payment of RM20m to the defendant by RHS was disclosed to and approved by both the Boards of Directors of RHS and the plaintiff on 8 November 2002 and 28 January 2003 respectively.

[19] In any case, the defendant contends that particulars of the payment of the RM20m to the defendant by RHS need not be disclosed to the members of the plaintiff in a general meeting (para12.2 & 12.3 defence).

Thus the vigorous contention of the defendant is that the RHS contract:

(a) was duly disclosed to and unanimously approved by RHS's shareholders on 5 August 1999, in accordance with the provisions of s 137(5)(b) of the Companies Act 1965; and

(b) was duly approved by the RHS's Board of Directors on 5 August 1999; and

(c) was also duly approved by the plaintiff's Board of Directors on 5 August 1999 even though these facts are not directly relevant since *RHS is not the plaintiff*.

[20] That the RM20m received by the defendant was in fact and in law, a payment made and borne by RHS and not by the plaintiff.

[21] That since the RM20m was not a payment made by the plaintiff, the consequences are that:

(a) Section 137 has not been breached;

(b) The plaintiff is not entitled to any repayment of the RM20m as prayed for; and

(c) The plaintiff has no cause of action against the defendant.

[22] Thus, the RM20m received by the defendant was a:

(a) repayment made and borne by RHS under the RHS contract; and

(b) that the RM20m cheque made out to the defendant by the plaintiff was intended and in fact meant as repayment by the plaintiff to RHS as part of the plaintiff's inter-company debt due and owing to RHS which at the time of payment totalled some RM182m.

[23] It is also the defendant's case that the mode of payment where the plaintiff released the RM20m direct to the defendant instead of paying it first to RHS (which should subsequently pay the defendant) was undertaken for two reasons, ie:

(a) It was done for commercial expedience since the same result would have been achieved should the plaintiff choose to pay the RM20m direct to RHS who would then issue its (RHS's) cheque to the defendant being payment of his gratuity;

(b) It was done, as a necessary precaution to preserve the Capital Adequacy Ratio (CAR) of RHS (which is one of plaintiff's subsidiary).

[24] Thus based on the plaintiff's pleaded case, the defence and the issues that are not in dispute, the issue/issues for this court's determination is illustrated below.

THE ISSUE/ISSUES TO BE DETERMINED

[25] To the sole issue proffered by the plaintiff (ie whether the RM20m payment made to the defendant was in breach of s 137(1) Companies Act 1965), the defendant added two more adjuncts, ie:

(a) For the purposes of s 137 Companies Act 1965 who, in fact and in law *made* and *bore* the payment of the RM20m received by the defendant upon his retirement from RHS?

(b) Whether the plaintiff is entitled to the payment of a sum of RM20m by reason of s 137 of the Companies Act 1965, even if it was not the plaintiff who paid the defendant the RM20m?

Section 137(1) Companies Act 1965 reads:

(a) It shall not be lawful for a company to make to any director any payment by way of compensation for loss of office as an officer of that company or of a subsidiary of that company or as consideration for or in connection with his retirement from any such office; or

(b) for any payment to be made to any director of a company in connection with the transfer of the whole of part of the undertaking or property of the company, unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

[26] This court had had the benefit of hearing testimony of witnesses from both sides and submissions and authorities cited by counsel for plaintiff and defendant, over a period of days in which the trial proceeded. The one question one might ask is this: Why is it important to determine who actually made the RM20m payment to the defendant?

[27] The importance of being earnest about establishing this fact in this case is that, it would determine whether s 137 had been contravened.

[28] The evidence before this court, both oral and documentary are in themselves, eloquent testimony to the issue at hand.

[29] The multifarious issues, inter-connected as they are, would mean that the sum of the many parts herein require that they be given specific and singular treatment.

The Evidence (documentary and oral)

[30] It must first be reminded that the relevant documentary evidence adduced are documents of the plaintiff and/or RHS of which their accuracy, authenticity or correctness were never called into question.

(a) The plaintiff's chequed dated 29 January 2003 for RM20m: (exh P–28 CAB (1) p 135)

It is never in dispute that the plaintiff issued a cheque for RM20m which was made out to the defendant.

(b) The RM20m slip deposit: (exh P– 30 CAB (3) p. 6)

It is also undisputed that cheque for RM20m was paid directly into the defendant's bank account on 7 February 2003

(c) The plaintiff's general ledger account No 209130 (Cash in Bank — RHB Bank Bhd) (exh P–65 CAB (3) p 32)

This document being the plaintiff's accounting ledger stating its cash position with its bank, RHB Bank Bhd shows that a payment of RM20m was paid out of the plaintiff's bank account with RHB Bank Bhd on 7 February 200w.

The plaintiff's own ledger states as follows:

> Gratuity paid on RHB Sec on behalf 279811 TS Abd Rashid H indicating in express terms that the payment was made on behalf of RHS.

(d) The plaintiff's RHB Bank Bhd statement for its current account No 21412900017794 (exh P31, CAB (3) p 8)

This statement clearly indicates that the plaintiff's said cheque No 279811 for RM20m was cleared on 7 February 2003.

(e) The plaintiff's debit note of 14 February 2003 issued to RHS for the RM20m payment (exh P62 CAB (3) p 11)

This debit note which is plaintiff's own document shows that the plaintiff debited RHS for the RM20m that was released to the defendant.

[31] In short, the uncontroverted fact is that the plaintiff 'charged' RHS for the said RM20m payment that it had released on RHS's behalf to the defendant.

(a) The plaintiff's inter-company loan ledger account with RHS (exh P–63, CAB (3) p 33)

This document shows that on the plaintiff's side, the plaintiff maintained an inter-company loan account with RHS under an account no 404000. The entry in exh P63 indicates that as at the beginning of January 2003, the plaintiff owed RHS a total sum of RM182,168,278m.

(b) RHS inter-company loan ledger account with plaintiff (exh P64, CAB (3) p 27)

This document shows that at RHS, the RHS inter-company loan account with the plaintiff was maintained under the account no 402000.

(c) The plaintiff's RHS debts in its inter—company loan ledger account with RHS (exh P63, CAB (3) p 34)

This document illustrates clearly that upon release of the RM20m by the plaintiff into the defendant's bank account on 7 February 2003, the plaintiff actually debited RHS with RM20m.

(d) This debit is reflected in the debit entry in the plaintiffs inter-company loan account with RHS, account 404000 — on 7 February 2003 with the following words:

Gratuity pd on RHB Sec on behalf 279811 TS Abd Rashid H (exh P–63AO).

The consequence of that entry is that the plaintiff's total debt of RM182m owed to RHS at the beginning of January 2003 was actually reduced by RM20m which means that the plaintiff's 'release' of the RM20m was in fact a repayment by the plaintiff of part of its outstanding debt due and owing to RHS. It was received and treated as such by both plaintiff and RHS.

(e) RHS credits plaintiff in RHS' inter-company loan ledger account (exh P64, CAB (3) p 27)

RHS accordingly credited the plaintiff with RM20m in its own books in relation to its inter-company loans with the plaintiff after RHS received this debit note of 14 February 2003 from the plaintiff (exh IP–62)

This was effected by way of a credit entry on 14 February 2003 of RM20m in favour of the plaintiff in RHS's inter-company loan account with the plaintiff, account no 402000 in the following words:

BGL3 —TSARH —Gratui

Significantly, in RHS's books, the plaintiff's total debt of RM182m owed to RHS was correspondingly by RM20m.

Thus in both the companies' accounting records, the release of the RM20m by the plaintiff to the defendant was treated by both plaintiff and RHS as a repayment by the plaintiff of part of the plaintiff's total outstanding debt due and owing to RHS.

The defendant contends that the above entries are record of the fact that:

(i) the plaintiff repaid RM20m of its debt due and owing to RHS,

(ii) Both companies acknowledged that fact, and

(iii) The plaintiff's debt was actually reduced by RM20m

The defendant went on to say that if the plaintiff were to succeed in recovering the RM20m from the defendant the plaintiff will be unjustly enriched by a windfall of RM20m. It needs mention that the plaintiff found the defendant's contention above fallacious, on the grounds that:

(a) Quite apart from the facts that there was no physical or actual payment by plaintiff to RHS (as per the RM20m cheque) the whole transaction merely translated into there being a ledger entry only.

(b) That it is admitted and proven that the RM20m was made from the plaintiff's funds. Therefore it is the plaintiff which made the payment, *not RHS*.

(c) That from the entries, it is clear that the said sum of RM20m relates to the gratuity payment to the defendant and is therefore caught under s 137(1) Company Act ie, a payment by the plaintiff for the defendant's loss of office in the plaintiff or its subsidiary, RHS.

[32] Plaintiff contends that RHS did not make the RM20m payment within the meaning of s 137(1)(a) Companies Act 1965. It was the plaintiff which made the payment. That making an accounting entry especially after the fact of payment has occurred, does not and could not alter the fact that it was the plaintiff which made the payment.

[33] The plaintiff argued that the defendant himself states that the payment was advanced by the plaintiff on behalf of RHS (see para 7 at p 179 CAB exh. P54) and any entry in the plaintiff's books that the RM20m payment was 'borne' by RHS does not change the fact that said payment was 'made' by the plaintiff. Before this court gives its view on the plaintiff's contention as to the significance of these entries and consequently who made the payment of RM20m, this court would first illustrate the rest of the documentary evidence as to give a comprehensive take on the subject.

[34] Looking at the next document which is the forgiveness of the debt proposal p 30 (exh P– 32 CAB (2)) dated 26 February 2003, it is found that:

[35] The said proposal came about due to the plaintiff having warranted that all liabilities of RHS had been taken up (accounted for) in an agreement whereby the shares owned by the plaintiff in RHS were transferred to RHB Sakura.

[36] The said proposal states in para 2 that 'RHB Capital (plaintiff) had in this month paid an amount of RM20m on behalf of RHB Securities (RHS) to TSARH (defendant) as gratuity for TSARH's service with RHB Securities in accordance with the terms provided in TSARH's service contract with RHB Securities.

[37] According to the defendant all the inter-company loan transactions and entries regarding the RM20m were effected before this 'forgiveness of debt proposal' was drafted.

[38] The plaintiff contends that it would be appropriate for the plaintiff to 'forgive' the amount owing to RHS for the payment made.

[39] The plaintiff's strong contention as regards the 'forgiveness proposal' is that if the sum of RM20m was in fact only a mere repayment by the plaintiff to RHS to reduce the inter-company debt due from the plaintiff to RHS by coincidentally a sum equal to that of RM20m payment, then what amount would there be 'owing by RHB Securities' (RHS) for the plaintiff to forgive at all?

[40] The plaintiff went on to say that if that was really the position there would be nothing for the plaintiff to forgive since the defendants says the plaintiff was reducing its debt to RHS by a sum of RM20m..

[41] In any event, though entries of the 'forgiveness proposal' were made in the books of the plaintiff and RHS, the board of the plaintiff subsequently decided to reverse the entries.

[42] The plaintiff went on to say that this reversal is reflective of the status of the accounting entries in that accounting entries are not necessarily reliable as they do not necessarily show the true facts or state of affairs. They are merely accounting entries.

RHS statutory financial statements of 30 June 2003 [(exh D93, CAB (4)(a) p 39]

[43] Price Waterhouse Coopers (PWC) was the external independent auditors of RHS, which audited the accounts of RHS for its financial year ended 30 June 2003.

[44] PWC states in RHS's statutory financial statement (CAB (4)(a) p 1) that the financial statements gave a true and fair view of the matters required under s 169 of the Companies Act 1965 and the state of affairs of RHS as at 30 June 2003.

[45] Importantly, this financial statement was never altered in anyway and thus remains in its original form, representing a true and fair view of RHS's financial affairs held by its independent professional auditors.

Plaintiff's annual report ended 30 June 2003 (exh P37 CAB (4) (a) p 40)

[46] PWC being the plaintiff's independent external auditors stated in its report dated 28 February 2003 that the financial statements gave a true & fair view of the matters required under s 169 of the Companies Act 1965 and the state of affairs of the plaintiff as at 30 June 2003.

[47] At p 102, there is Note 34 of the plaintiff's financial statement of 30 June 2003, wherein PWC stated that: *RHS* had *made* a gratuity payment of RM20m to the former chairman upon his retirement. The former chairman is the defendant.

A *Plaintiff's board of director's v view at its meeting of 25 June 2003 (exh P–90, CAB(2) p 52)*

[48] The plaintiff's board of directors meeting of 25 June 2003 in its minutes of which exh P90 is a certified true copy thereof states at para 2(b)(i) that

B (i) RHB securities recorded a loss before tax of RM21.9m for May 2003 as compared to the budgeted PBT of RM2.2 million due to the reversal of the forgiveness of debt by the Company to RHB Securities in respect of the gratuity payment RM20m to Tan Sri Abdul Rashid Hussain. Revenue for the month of RM2.7m was lower than the budget of RM8.1 million.

C *RHS's board of director's view (exh P50, CAB (2) p 59)*

[49] These are certified true copies of extracts of the minutes of RHS's Board of Director's meeting of 25 July 2003, where para ix states:

D The Company incurred a loss before taxation of RM33.6m for the financial year ended 30 June 2003 due largely to a gratuity payment of RM20m made by the company to Tan Sri Abdul Rashid Hussain upon his retirement from the cmpany.

The Errata to Note 34 of the plaintiff's statutory financial statements of 30 June 2003 (exh P38 CAB 4(a) p 157)

E **[50]** Note 34 was originally written as:

During the financial year, the securities subsidiary company RHB Securities Sdn Bhd made a gratuity payment of RM20m to the former chairman, upon his retirement.

F During the plaintiff's annual general meeting of 8 December 2003, the plaintiff's management caused an errata to be made on Note 34 which leads as follows:

During the financial year, the Company made a gratuity payment of RM20m to the former Executive Chairman upon his retirement and this item is currently borne by the securities subsidiary.

G *The court's view on the documentary evidence as found in the accounting records and entries mentioned above.*

[51] The said entries, by their explicit language provide stark indication of the actual status of the said RM20m. Whilst it is in no doubt that it was the plaintiff H which released its own cheque directly to the defendant, it is also in this court's view, in no doubt who actually bore the payment of the said RM20m. The RM20m as reflected in all the entries from both companies (plaintiff and RHS) show that the said amount was taken up, charged to, borne or suffered by RHS.

I **[52]** This court finds the approach on the issue of 'payment' by the plaintiff completely inexplicable.

[53] The plaintiff appears to disregard its own accounting records and entries of and these of RHS, as approved by their external auditors, when it proclaimed with complete insouciance that:

It is admitted and proven that the RM20m payment was made from the plaintiff's funds. Therefore it is the plaintiff which made the payment, not RHS.

[54] The plaintiff's reasoning above does no more than merely scratch the surface of the deeper issues involved. In fact a simplistic conclusion such as this would be acceptable only if parties are deprived of sight of the documents and entries and/or diligence of counsel.

[55] But in the absence of these deprivations, there is judicial reluctance to subscribe to the plaintiff's unremarkable determination, as the word 'payment', 'bearing', 'releasing' or 'disbursing' are not terms of art. In plain English it simply means a situation where A makes payment on B's behalf to C, and if it was stated later that B bore or took on the burden of the payment, it is clear that it is B who made the payment. There is nothing sinister in this. Surely there is no other meaning or shades of meaning to the term (payment) or any nuance to it whatsoever.

[56] Given the above situation it is clear that it was RHS which made the payment to the defendant.

[57] On this point, it is seen that even the plaintiff's own witnesses PW1 & PW2 could not help but give unwitting and natural responses to the questions of who made the payment of RM20m to the defendant, when under cross-examination PW1 said:

PW1: I think it was out of plaintiff's accounting but *paid by RHS*. When further cross-examined by counsel: 'So based on the record, it was RHS who made the payment?'

PW1 answered: Yes

In the case of PW2, in a series of replies to defendant counsel's question during cross-examination, PW2 gave an unhesitating answer that:

In reality RM20m was made and borne by RHS (see p 83 & 84 notes of evidence dated 5 January 2003

To another question from defendant's counsel:… Apart from accounting perspectives, it is also a matter of fact that it was made and borne by RHS? PW2 also answered in the affirmative.

[58] Thus the unequivocal testimonies of PW1 & PW2 are reason enough to say that the plaintiff's understanding of the word 'payment' in the context of s 137(1) is suspect, for clearly the inescapable fact of who actually made the payment seems to elude the plaintiff.

[59] Moving on to the issue of the Forgiveness Proposal, the plaintiff's poser was, since the RM20m was only a repayment by plaintiff to RHS to reduce its debt, then what amount would there be owing to RHS for the plaintiff to forgive at all? In fact the plaintiff says, there is nothing to forgive.

A **[60]** This court finds from the materials before it, that the 'Forgiveness proposal' came about after all the inter-company loan entries regarding the RM20m had already been effected and the said proposal arose due to the plaintiff's sale of RHS to RHB Sakura Merchant Bankers Bhd (RHB Sakura). Under the sale, the plaintiff gave warranties to RHB Sakura relating to RHS's liabilities. When the warranties were given, RHS's obligation and liability to pay the defendant under the RHS contract had not arisen; in fact it arose after the warranties were given.

[61] To avoid any possible breach of the warranties, the 'Forgiveness proposal' was made to address the issue of the said warranties given to RHB Sakura that all liabilities of RHS had been taken up and to avoid any breach of warranties.

[62] The 'Forgiveness proposal' was subsequently reversed, leaving the original entries intact.

[63] In any case, given the factual position, the words 'forgiveness proposal' strike a wrong note, since the words are not so much a misnomer as much as an unfortunate label, giving an erroneous slant to the actual financial position therein.

[64] The 'Forgiveness proposal' in fact, confirms the fact that it was not RHC which made the RM20m payment to the defendant, especially when PW2, during cross-examination, agreed that the problem with Sakura warranty would not have arisen (thus the need for the forgiveness proposal) if payment of RM20m was not made and borne by RHS. Perhaps one of the most telling evidence as regards the accounting entries is found in Note 34 to the plaintiff's statutory financial statements of 30 June 2003 and the Errata which followed, on 8 December 2003.

[65] The prelude to this unusual occurrence is that the language of Note 34 merely states the fact that it was RHS which made the payment of RM20m to the defendant. This was plain, simple and innocuous. The plaintiff's board at its annual general meeting of 8 December 2003 however took a slight turn with the language of Note 34 to and effected an Errata.

[66] However even the language of the Errata is unable to obscure the fact that it was RHS which made the RM20m payment. The Errata states:

[67] During the financial year, the company made a gratuity payment of RM20m to the former Executive Chairman upon his retirement and this item is *currently borne by the security subsidiary*.

[68] The language of the plaintiff's Errata is inconsistent at best and grossly paradoxical at worst, which again illustrates plaintiff's misunderstanding of the term 'payment'.

[69] In fact even PW1 could not help the plaintiff's case when she acknowledged during cross-examination that in her view the money (RM20m) was made out of plaintiff's account but paid by RHS.

[70] When reiterated by defendant's counsel that: 'So based on the record, it was RHS who made payment?' **A**

PW1 answered in the affirmative.

(See Notes of Evidence for 7 December 2004 pp 50 & 51)

B

[71] The plaintiff's second witness PW2 was of a similar view with PW1 as regards the Errata as established during cross-examination as seen at p 107 of the Notes of Evidence for 5 January 2005.

[72] Thus the Errata much like a comedy of errors, did not in any way change the true position that in fact, it was RHS which made the payment of RM20m to the defendant. Even the plaintiff's statutory financial statements and that of RHS as of 30 June 2003 do not assist the plaintiff. **C**

[73] Page 39 of RHS's statutory financial statements containing the report of its external auditors ie Price Waterhouse Coopers (PWC) affirmed by one Dato' Ahmad Johan Roslan states that the financial statements give a true and fair view of the matters required under s 169 of the Companies Act 1965 and the state of affairs of RHS as at 30 June 2005. **D**

[74] Since the said financial statements was never amended or altered in any way, it represents a true and fair view of RHS's financial affairs held by its independent professional auditors. **E**

[75] Likewise in the plaintiff's annual report for the period ended 30 June 2003, PWC as its external auditors had stated in its report of 28 August 2003 that the financial statements gave a true and fair view required under s 169 Companies Act 1965 and the state of affairs of the plaintiff as at 30 June 2003. (exh P37 CAB 4 (A) p 155). **F**

[76] Compare this with the plaintiff's board of director's meeting of 25 June 2003 (exh. P90) where it was also the board's view that it was RHS which paid and bore the gratuity payment of RM20m to the defendant. **G**

[77] The significance of the above mentioned financial statements and statements in the plaintiff's annual report attesting and confirming that the payment of RM20m is made by RHS bears heavily. **H**

[78] Seen in this light, the language of the Errata is a contradiction in terms with the rest of the entries in the accounting record of both the plaintiff and RHS. In fact it is this court's view that the position taken by the plaintiff on the significance and importance of the entries in their own records appear to be at odds with the factual position, when the plaintiff caused an Errata to be effected. If, as the plaintiff had time and again reiterated, that the accounting records are 'irrelevant' or are 'mere entries', it is farcical that the plaintiff then thought it fit to alter the record when they effected the Errata. Why bother at all if these are 'mere entries' and could **I**

be altered capriciously and at will by the company? Such is the plaintiff's position and that the Errata has much to do with the question posed vis-a-vis s 137, is not discounted.

[79] Coming back to the stand taken by the plaintiff as regards its annual report ended 30 June 2003 and RHS's statutory financial statements ended 30 June 2003, the essence of it is that the plaintiff is dismissive of the auditor's opinion on the same.

The plaintiff's views are:

(i) The *auditors opinion is irrelevant* to determine whether there breach of s 137 and at page 25 of the plaintiff's submission, plaintiff said:

(ii) *'PWC's opinion* on whether the accounts are true or fair statements of the affairs of the company is of no significance.

(iii) In any event, such statements do not show at all whether PWC considered who made this RM20m payment under s 137 Companies Act 1965 or whether the payment complied with s 137.

(iv) There is no evidence that PWC even considered s 137 vis-a vis the RM20m payment and even if they did, their opinion on the law would *be irrelevant*.

[80] The plaintiff's disregard for the duty of auditors seems to be at variance with the current consciousness of the statutory and professional status of auditors.

[81] The plaintiff appears to remain misguided on the role of auditors (internal or external). This court finds that s 174 of the Companies Act 1965 would therefore be a good place for the plaintiff to start getting acquainted with this important component in corporate governance.

[82] In the statutory financial statements of RHS and the plaintiff's annual report mentioned earlier, the auditors have a professional responsibility to make sure that the financial information is reliable. Auditors obviously have considerable legal responsibility for their work, especially in detecting corporate malfeasance.

[83] Price Waterhouse Coopers in both the above mentioned statutory financial statements and annual report gave unqualified statements as regards the account and state of affairs of the company *(plaintiff)*.

[84] This, and the clear language in s 174(8) Companies Act where it is stated that:

> If an auditor, in the cause of the performance of his duties as auditor of a company, is satisfied that:
>
> There has been a breach or non-observance of any of the provision of this Act….
>
> He shall forthwith report the matter in writing to the registrar.
>
> makes clear the professional duties of auditors. The penal consequence of such failure, is an imprisonment for two years or fine of thirty thousand ringgit or both.

[85] In the instant case, there was no such auditor's report of any breach or non-observance by the plaintiff or RHS of any of the provisions of the Companies Act.

[86] In fact under s 169(4) of the Companies Act, all companies incorporated under the Act are statutorily required to have its profit and loss account and balance sheets to be duly audited before the accounts are presented at the Annual General Meeting.

[87] In any case should there be any discrepancy or if the report of the auditor is questionable, the auditor stands to be questioned by shareholders at the AGM. In this connection it is apposite to note that no criticism whatsoever of PWC's conduct in this regard was even remotely suggested by the plaintiff.

[88] Coming back to the instant matter, it is untenable therefore for the plaintiff to submit at p 25 (plaintiff's submission in reply) that:

> In any event, such statements do not show at all whether PWC considered who made the RM20 m payment under s 137 Companies Act or whether the payment complied with s 137 Companies Act.

[89] This court disagrees with the plaintiff's view and this court's view is that, it is not without significance that PWC had stated that in the above mentioned statements and accounts *it was RHS which made the payment of RM20m to the former chairman. The plaintiff's submission that entries in the audited accounts are not reliable facts and cannot be relied on since the entries are changeable at will, do not stand up to scrutiny. It is evident that nowhere in the pleadings or at the trial were the entries challenged.*

[90] A bare allegation as it were, that the accounts are not necessarily accurate or unreliable is insufficient. The plaintiff has to substantiate their contention.

[91] In *Ho v Comptroller of Income Tax* [1994] SGITBR 2, the board accepted the HK Income Tax Board of Review's opinion that if a taxpayer wishes to challenge the accuracy of his own audited statements… made by a director it is not sufficient merely to say that… a mistake was made…. Evidence to substantiate the mistake must be given in the strongest terms.

[92] Then again in *ABC Supermarket Pte Ltd v Kosma Handlings Pte Ltd (The Management Corporation Strata Title, 3rd party)* [2004] SGDC 193, the deputy registrar in the lower decision had decided that 'the figure in support of the alleged losses… were based on the audited profit and loss accounts of the plaintiffs. The defendant's objection to it's admissibility is misconceived…'

[93] In the instant case, the plaintiff had not challenged the accuracy of these accounts during the hearing and it is too late for them to do so during submission.

[94] In this context an imperative provision to consider is s 34 Evidence Act 1950 which provides: Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, but the entries shall not alone be sufficient evidence to charge any person with liability.

> Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, but the entries shall not alone be sufficient evidence to charge any person with liability.

[95] It is explained in The Annotated Statutes of Malaysia (Butterworths, 2000 Reissue) that this section is based upon the principle that entries made regularly in the course of business are likely to be accurate. There is in fact the strongest improbability of untruth in such entries.

[96] As to the second limb on sufficiency to charge a person with liability, what is necessary in each case is whether besides the entries in a book of accounts, there is any evidence to prove that the transaction referred to in those entries actually took place.

[97] In *Sim Siok Eng & Anor v Poh Hua Transport & Contractor Sdn Bhd* [1980] 2 MLJ 72 the court decided that the corroboration may not necessarily always come from extrinsic evidence, as it may intrinsically be proved by the book of accounts itself.

[98] In view of the statutory requirements for the making of accurate accounting statements by companies and auditors to confirm that the accounts give a true and fair view of the state of affairs of the company and that the accounts have been made out in accordance with the applicable approved accounting standards (s 174 Companies Act 1965), and given the rules and duties of company directors and auditors, the plaintiff counsels' argument that the entries in the audited accounts of the company are inaccurate means that the company is exposing its directors and auditors to liability under the Act. In fact, the plaintiff company may be incriminating itself too.

[99] In view of the foregoing, one has to look again at s 137 and see how that section is treated by both the plaintiff and defendant.

[100] The plaintiff maintains that despite the facts and circumstances in this case:

(i) The payment of RM 20m was made by the plaintiff

(ii) That the payment had not been disclosed to and obtained approval of the plaintiff's shareholders

(iii) That the plaintiff's board of directors did not approve that the RM20m payment was to be made from plaintiff's funds on behalf of RHS

(iv) That there was no request from RHS to the plaintiff to make the RM20m to the defendant.

This court, after much scrutiny of the court records finds that:

(1) Before their execution, both the proposed RHC and RHS contracts were presented to the board of directors of the plaintiff on 5 August 1999 for their consideration and approval.

RHS was at that time a wholly owned subsidiary of plaintiff.

(2) Defendant's first witness Mr Chong Kin Leong (DW1) was given express authority by the plaintiff's board of directors to sign the RHC contracts for and on behalf of the plaintiff.

[101] This is a critical point, in view of s 137 and the exemption clause therein ie s 137(5)(b).

[102] Regard must be had to exh P13 p 7(CAB(2)), where pursuant to s 147(6) Companies Act 1965, Mr Chong Kin Leong was the duly appointed representative of RHB Capital Bhd (plaintiff).

[103] Was Mr Chong as the corporate representative of the plaintiff authorized to act on the plaintiff's behalf in the EGM of RHS of 5 August 1999 when the service contract with the defendant was entered into with the Executive Chairman of the company based on the terms and conditions of the service contract attached as Appendix I?

[104] The plaintiff at the material time was the sole shareholder of RHS and in accordance with s 147(6) Companies Act DW1 as the corporate representative is therefore authorized to state that any act, matter or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed or passed, that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

(1) The terms and conditions of the RHS contract were duly approved by RHS's Board of Directors on 5 August 1998. DW1 by the resolution was expressly authorized by RHS to sign the RHS contract for and on behalf or RHS.

(2) The terms and conditions of the RHS contract was also approved by the members of RHS through a member's resolution at an EGM held on 5 August 1999.

(3) DW1 attended the said EGM of RHS on 5 August 1999 as the duly appointed representative of the plaintiff pursuant to s 147(6) Companies Act

(4) DW1 was at all material times the duly appointed and authorized representative of the plaintiff to attend and to act on behalf of the plaintiff at all shareholders meeting or RHS pursuant to i s 147(3), based on the director's circular resolution of the plaintiff passed on 11 September 1997. DW1 signed

A both the RHC and RHS contracts on 5 August 1999 for and on behalf of the plaintiff and RHS respectively based on terms and conditions as approved by the respective boards.

[105] In the matter of the defendant's retirement from RHS and approval for
B payment under the RHS contract, DW1 was invited and attended the RHS's Board of Director's meeting in his capacity as the Finance Director of RHB.

[106] At that meeting, DW1 acted in his capacity as the Finance Director of the RHB group of companies because this was one of the financial obligations of RHS.

C

[107] Subsequently at the plaintiff's Board of Directors meeting on 28 January 2003 DW1 as director, DW1 reminded the board that under the RHS contract, RHS has an obligation to pay defendant a total of RM20m, upon his retirement. *This was noted by the Board in its minutes.*

D

[108] The total sum of RM20m was calculated based on RM1m for each year of service which the defendant rendered to RHS commencing 1983, in accordance with the terms and conditions of the RHS contract.

[109] As this court had taken note of DWl's duties as Finance Director of the RHB
E Group of Companies, it is obvious that DW1 has clear authority to manage the movement of funds between plaintiff and RHS which amongst others, govern the inter-company loan agreements which had been approved by the Board of Directors of both the plaintiff and RHS.

F **[110]** As a corollary to those duties, DW1 was himself instructed by the Board of Directors of the plaintiff to set about the payment to the defendant, which he dutifully executed.

[111] However the troubling feature in this suit is, how could the plaintiff possibly
G construe that the RM20m payment was under any circumstance, made by the plaintiff, flying in the face of facts and evidence to the contrary.

[112] Even assuming on the off-chance, that the plaintiff is correct that it was the plaintiff which paid the RM20m, the question is, why? Why should the plaintiff do
H so, when the RHC contract with the defendant makes no provision whatsoever for such payment to the defendant; when it is clear that the plaintiff is not obliged legally or morally nor duty bound nor under duress, to make such payment

[113] However the position clears up when one examines the terms of the RHC
I and RHS contracts with the defendant; when one critically analyses the collective significance of all the accounting entries, the financial statements, the auditors reports and the annual reports admitted here in and the oral testimony of witnesses where it is clear that the sum total of all these, point unerringly to the fact that the *plaintiff made out the RM20m cheque to the defendant on behalf of RHS, and RHS bore the said payment in its books*

[114] In the light of the above, it is time to now appraise s 137 Companies Act 1965.

[115] A good starting point would be the explanatory statement to the Companies Bill 1965 which states:

> Cl 137 strictly limits the right of a company to make payments to a director on his retirement. Attention is drawn especially to the exemptions contained in sub-clause (5) and to the extension of the provisions of the clause contained in sub-clause (7). Greater disclosure to the shareholders is provided than in the existing legislation.

[116] Quite rightly, the purpose of s 137(1)(a) is to protect shareholders from those in management (directors) from utilising the company's assets in their favour when it involves compensation for loss of office or as consideration for or in connection with his retirement from any such office.

[117] The plaintiff's submission, based on the notion, as it were, that it was the plaintiff which made the payment of RM20m was therefore beyond comprehension.

[118] The plaintiff contends that the applicability of s 137 in this case admits of two rules of construction, both literal and purposive; that whichever rule of construction is applied, the payment of the RM20m to the defendant is still a breach of s 137. In short, the plaintiff would have us believe in this that all roads lead to Rome.

[119] The plaintiff argues that this is because:

(a) The Board of Directors of the plaintiff did not approve the RHS contract, (see p 39 plaintiff's submission)

(b) The shareholders/members of RHB did not approve the RHS contract, (p 39 plaintiff's submission and PWl's witness statement p 12)

(c) The Plaintiff's Board of Directors did not approve that the RM20m payment be made from the plaintiff's funds nor was there a request for an advance from RHS to pay the RM20m to the defendant.

(d) Neither did the plaintiff's Board of Directors approve that the RM20m payment be made from the plaintiff's funds on behalf of RHS.

(e) There was no request from RHS to the plaintiff to make the RM20m payment to the defendant.

(f) There was no relevant approval from the shareholders/members of the plaintiff for the RM20m payment, to be made from the plaintiff's funds.

(g) There was no approval from shareholders/members of the plaintiff for RM20m to be made by RHS.

(h) There was no approval obtained from the shareholders/members of the RHB for the RM20m payment to be made by the plaintiff or by RHS.

(i) There was no approval obtained from the shareholders/members of the RHB Sakura for RM20m payment to be made by RHS

[120] The essence of the plaintiff's lengthy diatribe is that, despite the internal accounting entries, nothing can change the fact that the RM20m payment was made by the plaintiff out of the plaintiff's funds and therefore it was not made by RHS.

[121] The plaintiff went on to say that this has the consequence that there was therefore no disclosure to and approval of the *plaintiff's shareholders/members* in accordance with the purpose of s 137(1), otherwise the object and purpose of s 137(1) would not be met and can be circumvented.

[122] The plaintiff also contends that the precise amount of the payment need be made known to the shareholders before they can grant the approval; that the so called approval by the Board of Directors of the plaintiff (on the RHS contract) on 5 August 1999 is insufficient approval vis-a-vis s 137(1).

[123] The plaintiff further contends that the purposive construction of s 137(1) requires that even the plaintiff's shareholders should approve the payment at the time of the RHS contract. The plaintiff's shareholders at the time of the RM20m payment, *were RHB and members of the public*. Thus it is not sufficient for only the plaintiff's Board of Directors to approve the RHS contract without including the approval of plaintiff's shareholders as well, ie RHB and members of the public.

[124] The plaintiff continued in the same vein, when it said, '… It would give rise to an absurd situation if the position in law is that if RHS was making the payment, the plaintiff's shareholders do not need to approve it but if the plaintiff was making the very same payment, they need approval from the plaintiff's shareholders.

[125] This court finds the plaintiff's contention above completely wide off the mark

[126] Whilst it is true that s 137(1) is to protect shareholders/members from directors and those in management from the shareholders fund being dissipated in compensation payments or 'golden handshakes' and the like, it is clearly erroneous for the plaintiff to construe that it requires disclosure to and approval of the *shareholder's shareholders* ie, the plaintiffs shareholders as well.

[127] A plain reading of s 137(1)(a) would show that the intention of Parliament is clear. The legislative intent is clearly meant to provide 'greater disclosure to the shareholders…'

[128] It is this court's view that it is certainly not the legislative intention to provide disclosure to the shareholder's shareholders for to do so would mean that the plaintiff is going beyond the legislative intent, rendering a bizarre and tortuous construction to what Parliament had contemplated.

[129] In fact if the literal meaning of an Act is clear and in accordance with the legislative purpose, it would be followed (see *Tan Kim Chuan v Chandra Nair* [1991] 1 CLJ 682). As Cockburn, CJ said in *Rex v Bishop of Oxford* [1879] 4 QBD 245.

> That a statute ought to be so construed that, if it can be prevented, no clause sentence or word shall be superfluous, void or insignifant..

[130] It is this court's view that, if one were to adopt the plaintiff's construction of s 137(1)(a) of the Companies Act 1965 requiring disclosure to and approval of the shareholder's shareholders as well, we would be over-stretching the language.

[131] The plaintiff's attempt to make s 137(1) 'clearer' as it were, as amplified in its submission, lends the construction of the section unnecessary surplusage and by imposing another meaning, one would not be construing the statute but actually enacting one!

[132] Perhaps to bolster a bad case, the plaintiff was on record to contend that:

> It is indeed *very strange* that the compensation clause for loss of office in the whole group *appears only in the RHS contract when* logically it should appear in the holding company's contract…

[133] It is not without significance that the validity of the two contracts (RHC and RHS) is not in issue. To say that it is illogical that the compensation clause is in the RHS contract and not in the holding company's contract, is neither here nor there and is in fact irrelevant.

[134] With regard to the plaintiff's contention that the precise amount of the payment must be disclosed, this court finds the contention otiose, as such requisite is absent in s 137(5)(b) since what is merely required therein is only that the *particulars* of the agreement is given.

[135] At the risk of being repetitive, it must be said again that:

(a) The RHS contract under which the RM20m was provided for and which was paid by RHS to the defendant had the prior unanimous approvals of:

(i) RHS's Board of Directors
(see exh P14, SPW–1, Q & A29, SDW–1, para 12 & 13);

(ii) The Plaintiff's Board of Directors
(exh P12, SPW–1, Q & A 27, SDW–1, para 11);

(iii) RHS's shareholders in general meeting
(exh P13, SPW –1, Q & A 28, SDW–1, para 12 & 13).

[136] These facts were confirmed and supported by the evidence from both the plaintiff and defendant.

A **[137]** Since the RM20m was not paid by the plaintiff, it would mean that the *company* mentioned in s 137(1) Companies Act 1965 *is RHS* and certainly not the plaintiff. Regard must be had once again to the relevant clauses in the RHS contract, particularly cl 15(c) which describes the payment as being '…. In recognition of the past services rendered by (the defendant) to the company.'

B

[138] From the facts disclosed in this court, the event which triggered off the payment is the defendant's departure from the company upon completion of the sale of his shares in RHB.

C **[139]** This fact is crucial, since the RM20m was *clearly part of the remuneration package* of the defendant and was *not intended* to be paid *with the object of compensating the defendant* for loss of his office or as consideration for or as consideration in connection with his retirement.

D **[140]** The crux of s 137(1) really is, what exactly, is the nature and circumstances of the payment? These must be scrutinised with a view to determining its true character.

[141] If it can be determined on the facts that the payments do not come within **E** the purview of s. 137(1)(a), then one has to look at the exceptions as are found in the said section.

[142] The fact that the payment coincided with the defendant's retirement does not alter the fact of the nature of the payment, insofar as s 137(1) is concerned.

F

[143] The authority for this proposition may be found in the decision of the Supreme Court of *Victoria in Lincoln Mills (Aust) Ltd v Gough* [1964] VR 193, which is persuasive, as are the rest of the authorities on the equivalent provision of s 137 cited in the instant case.

G

[144] *Lincoln Mills v Gough* was an action by the company against a managing director to recover sums of money paid to him by the company. These monies were paid as compensation to the managing director upon his retirement as provided for in a written service agreement the managing director had with the company.

H

[145] Section 129(1)(a) of the Australian Companies Act 1961 refers to 'Compensation for loss of office as a director and as consideration for or in connection with his retirement from such office'.

I **[146]** The defendant's argument was accepted by the court, when it submitted that the payment to him was made pursuant to the express terms of a written contract on the occurrence of an event therein provided for. That event was then termination by the defendant of the agreement which provided for his servicing the company and the company employing him as the managing director and general manager of the company for a specified term.

[147] The defendant contended that his ceasing to hold the office of director had nothing to do with payment to him of the sum in question. The defendant said that his right to receive it and the company's obligation to pay it was in no way dependant upon his loss of or retirement from the office of director.

[148] Thus in *Lincoln's Mill's* case, the Supreme Court in construing s 129 (which is almost in pari materia with s 137) held:

> The question whether the section applies in any particular case must, in my view, be determined by inquiring as to the nature of the payment that has been made. Assuming it has been made to a person who has held and has ceased to hold office as a director by reason of removal or retirement, it cannot be postulated in every such case that the payment falls into the category of those rendered unlawful by section 129(1)(a). The nature and circumstances of the payment must be looked at with a view to determining its true character. If as a result of investigation it becomes apparent that it is a compensation for loss of office of director or a consideration for retirement benefit therefrom it will be unlawful unless the sanctions of a general meeting has been obtained. If, on the other hand, the payment appears to have been made as a result of other considerations then even though it may be coincident with the loss of or retirement from office as a director, the payment will not fall within those prohibited by the section.

[149] My view as to the payment in the present case is that it was not made with this intent or object of compensating the defendant for loss of his office as a director or as consideration for his retirement therefrom. It was a payment which the Plaintiff company made and was liable to make to the defendant in the events that had happened on the termination of his office as managing director… In my judgment therefore, the payment was not rendered unlawful by the section.

[150] It would be instructive to now make reference to authorities in other jurisdictions on the same subject (ie s 137(1)), even if the language of the equivalent provision may differ slightly. A comparative dimension would hopefully provide an in-depth perspective to the said provision.

[151] The Singapore equivalent of s 137 (ie s 168) has been judicially considered as are determined in several case laws, such as *Britannia Brands (Singapore) Pte Ltd v Sushil Premchand* [1995] 1 SLR 128, *Grinsted v Britannia Brands (Holdings) Pte Ltd* [1995] 3 SLR 157, *Grinsted v Britannia Brands (Holdings) Pte Ltd* [1996] 2 SLR 97, *Fasi v Specialty Laboratories Asia Pte Ltd (No 2)* [1999] 4 SLR 503.

[152] In fact, s 168 of the Singapore Companies Act (Cap 50 1990 Ed) is in pari materia with our s 137, in that the payment in the section is not limited to compensation for loss of office as a director but includes as an officer of the company.

[153] In *Grinsted v Britannia Brands (Holdings) Pte Ltd* [1996] SLR 97, the Singapore Court of Appeal in considering the ambit of s 168(1) of the Singapore Companies Act, Cap 50 approved the decision in *Lincoln Mills*. The court looked at the nature and circumstances of *Grinsted's* remuneration and held that the severance benefits were a part and parcel of the remuneration package, that the severance

benefits were not intended to be paid with the object of compensating *Grinsted* for loss of office or in consideration for his retirement therefrom.

[154] The payments were in fact payment which Britannia Brands agreed to make and *were liable* to make to *Grinsted* in the event that his employment was terminated in accordance with the terms in the agreement. In such a situation, the court found that the payment as severance benefit do not fall within s 168(1).

[155] *As is obvious, the emphasis placed in the cases mentioned above is on the object of the payment*. Then again in the Singapore case of *Fasi v Specialty Laboratories Asia Pte Ltd (No 2)* [1999] 4 SLR 503, it was held that not every payment made to a director upon cessation of his employment is caught by s 168(1). Only payments aimed at compensating the director for loss of office are covered. *Payments which are made due to other considerations, even if they may be coincidental with the loss of office, will not be prohibited under* s 168.

[156] In the *Fasi* case, it might be stressed that the true nature of the severance payment was not compensation for loss of office but rather a payment in exchange for a period of non-competition by the plaintiff.

[157] The intent and object of the payment was consideration for the plaintiff's promise not to compete with the defendant's business for a specified period of time after leaving the company. Thus the court found that the severance compensation had not contravened s 168 and was not unlawful.

[158] However, in view of this and in spite of the Singapore Court of Appeal decision in *Grinsted v Britannia Brands (Holdings) Pte Ltd* [1996] SLR 97, it is strange that the plaintiff should cite a Singapore High Court decision on the same point and on the same provision ie s 168, in support of its contention, (ie *Britannia Brands (Singapore) Pte Ltd v Sushil Premchand* [1995] 1 SLR 128) when that particular point of law had been reversed by the Singapore Court of Appeal in *Grinsted*.

[159] It would appear that regard to the doctrine of stare decisis seems to escape the plaintiff.

[160] What is apparent is that in all these authorities, it is crucial to look at the intent and object of the payment.

[161] Of equal interest is the New Zealand position and its equivalent section is found in s 191 Companies Act 1955, which was tested in the case of *The Taupo Totara Timber Co Ltd v Rome* [1978] AC 537.

[162] In *The Taupo* case, an appeal from New Zealand to the Privy Council, the respondent entered into a service contract to serve as a managing director of the appellant. A clause in the service contract provided that in the event the appellant is taken over, he will be entitled to be paid by the appellant a sum equivalent to five

times his gross annual salary upon his resignation in accordance with the clause. The company was taken over and the respondent resigned.

[163] The Privy Council held that the respondent was entitled to the money as s 191 of the New Zealand Companies Act 1955 did not apply to covenanted payments.

[164] Lord Wilberforce observed that

> The respondent as well as being a director was an employee and as other employees with this company had the benefit of a service agreement. He was described as an 'employee' in it… There was no obligation on them to seek approval of this agreement by the company in general meeting.

[165] Section 191 of the New Zealand Companies Act reads:

> It shall not be lawful for a company any payment by way of compensation for or in connection with his retirement from office, without particulars with respect to the proposed payment being approved by the company in general meeting

[166] What can be gleaned from Lord Wilberforce's judgment is that the words 'proposed payment' indicate that the prohibition relates to unconvenanted payments as opposed to covenanted payments which the company is legally obliged to make.

[167] It is interesting to note that the Singapore Court of Appeal in *Grinsted v Britannia Brands (Holdings) Pte Ltd* [1996] 2 SLR 97, did not indicate that a distinction should be made between covenanted and uncovenanted payments since emphasis in these circumstances is always placed on the purpose and object of the payment

[168] The position in s 137 of the Companies Act 1965 suggests that the prohibition of payment of compensation applies not only in connection with the office of director but also to any director for loss of office 'as an officer', (note that the words 'as an officer' are absent in the New Zealand statute as well as in s 191 of the English Companies Act) unless the particulars of the proposed payments have been disclosed.

[169] It would appear that s 137 applies to both covenanted and uncovenanted payment unless the particulars of the covenanted payment under the service contract had previously been disclosed to and approved by a special resolution of the company under s 137(5)(b).

[170] As the court in *Grinsted v Britannia* observed in applying s 168 and which can be applicable too in s 137, and in the light of the authorities above mentioned, it is apparent that even if one is employed by the company in an executive position one is not necessarily caught by the sanction or prohibition in the section. One would also have to be a director of the company, since what is not lawful by the section is for a company to make to any director any payment.

[171] In short, one must be a director as well as being employed by the company in an executive position. The second point to note is that not every payment to a director upon the cessation of his employment with the company, would fall within the prohibition of s 137(1)

[172] Though the word 'compensation' in all these authorities is not fully explored, this court would take the view in the light of the rationale inherent in s 137, that 'compensation' generally refers to payment to 'recompense' the director or officer concerned following the loss of office. But if the payment has *no connection* with the loss of office and where it is shown that the true character and nature of the payment arises from *other considerations*, then the said compensation payable is not within the prohibition of the section.

[173] In view of the foregoing facts, pleadings, evidence (both oral and documentary) and authorities cited by parties, it is this court's view that the RM20m payment to the defendant was a legitimate payment under the terms of his service contract as part of his remuneration package. It was not paid with the object of compensating the defendant for loss of his office or as consideration for or in connection with his retirement.

[174] It bears repetition that this fact is borne out in cl 15(c) of the RHC contract which describes the payment as being '… in recognition of the past services rendered by the defendant to the company.

[175] Even if the postulation is that the payment coincided with the defendant's retirement it does not alter the nature of the payment, as to make it fall within s 137(1) of the Companies Act 1965. In other words, it was a payment which RHS had agreed and was liable to make to the defendant in the events that had happened upon his ceasing to hold his office *Lincoln Mills v Gough* [1994] VR 193 under the terms of the RHS contract. This construction will not only attain the just ends of the section (s 137), it would also secure its manifest purpose.

[176] As the payment of RM20m to the defendant was in fact and in law, a payment by RHS and not the plaintiff and since it attracts the exception in cl (5)(b) of s 137, the issue of approval as contemplated by the plaintiff under s 137(1)(a) falls by the wayside and is therefore irrelevant.

[177] Consequently the plaintiff's entire claim is without basis and is hereby dismissed with costs.

[178] On a final note, the defendant's counsel sought an order for a certificate for two counsel, pursuant to O 59 r 19 of the Rules of the High Court 1980.

[179] In view of the novel point of law raised in this suit (since s 137 has never been judicially determined in Malaysia) and the fact that in the course of the travaux prepatoire of this case, the legal complexity involved is heightened and lastly based on the principles expressed in cases such as *Kamalam v Eastern Plantation Agencies*

[1996] 4 MLJ 174, this court finds no good reason to deny the defendant obtaining a certificate for two counsel pursuant to O 59 r 19 Rules of the High Court 1980.

Claim dismissed with costs.

Reported by Loo Lai Mee